IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.929 OF 2004
IN
SUMMARY SUIT NO.2833 OF 1998

Mrs. Prabha P. Shenai ..... Plaintiff
vs.
Shakti Acquaculture Farms Ltd ..... Defendant

M.Memon with M.S. Prasad for defendants.
Mr. C.D. D'souza i/b. Ashwinikumar for plaintiffsto show cause.

CORAM: S.U. KAMDAR, J.

DATE : 4TH APRIL, 2005.

P.C. :

1. The present chamber summons has been taken out for setting aside the execution application no 162 of 2004 on the ground that the defendant judgment debtor is declared a sick industrial company by the BIFR.

2. In support of the aforesaid contention reliance has been placed on a letter dated 17.12.2002

registering a reference under s.15(1) of the Sick Industrial companies Act, 1985. The aforesaid chamber summons is sought to be opposed by the respondent by contending the following two grounds.

3. Firstly it is contended that the defendant company has suppressed the claim of the plaintiffs in a scheme formulated before the BIFR. It has been contended that the said suppression is very vital because the plaintiffs is also holding a decree in their favour.

4. Secondly it is contended that the period of 2 years prescribed under sub-section 3 of section 22 of the Sick Industrial (Special Provisons) Act, 1985 is already complete and the said period having not been extended the declaration of the company as sick company must lapse. In my opinion the objections raised by the plaintiff have no merits. In so far as the second contention is concerned reliance is placed on proviso to sub-section 3 of s.22 is totally misconceived.

5. In my view sub-section 3 does not apply in the present case. The proviso to sub-section 3 applies only when there is a special order issued suspending any contract or any instrument or decree as provided therein. In the present case execution of the decree is required to be stayed by virtue of provision of sub-section (1) of s.22 itself.

6. In so far as first contention is concerned it is not possible to accept the argument of the learned counsel for decree holder. Merely because the claim of the decree holder is not stated in the scheme filed before the Board would not be sufficient to defeat the provisions of s.22(1) of the Act. It is open to the decree holder to approach BIFR and seek necessary directions in that behalf.

7. In view thereof the present chamber summons will have to be granted. Execution proceedings will have to be stayed. Accordingly the execution proceedings in execution application no. 162 of 2004 is stayed and the same is adjourned sine-die. It is made clear that the defendant company shall intimate to

the plaintiff the status of the case every six months and if any final order is passed then communicate the same within fifteen days from the passing of such an order. On such order being passed the plaintiff will be at liberty to revive the execution application in the present case. The present chamber summons is disposed off accordingly with no order as to costs.

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